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**UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA**

ABRAHAM FOROUZAN,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC,  
et al.,

Defendants.

**CASE NO.: 2:17-cv-3875-DMG-GJS**

[Assigned to the Hon. Dolly M. Gee]

**PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF PLAINTIFF'S TRIAL BRIEF RE:  
LEASE DAMAGES**

Trial: September 25, 2018, 8:30 a.m.

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiff Abraham  
2 Forouzan respectfully requests that this Court take judicial notice of the following  
3 document in support of Plaintiff's Trial Brief re: Lease Damages:

- 4
- 5 1) The following excerpt from the deposition transcript of Salvador Santillan,  
6 PMQ for California Department of Consumer Affairs, Arbitration  
7 Certification Program ("ACP") offered in the matter of *Ramon Alvez and*  
8 *Barbara Souza v. Kia Motors America, Inc.*, Los Angeles Superior Court  
9 Case No. BC608207, taken October 4, 2017, pages 61:23-63:4 (A true and  
10 correct copy of the pertinent pages is attached hereto as Exhibit 1):

11

12 BY MS. LEE

13 23 Q. And going back to the topic in the deposition  
14 subpoena with regards to the ACP's policies and  
15 25 procedures regarding repurchase and replacement calculations  
16 1 pursuant to the Song-Beverly Consumer  
17 2 Warrant Act, what is the ACP's policy -- what is -- what  
18 3 are the ACP's policies and procedures regarding  
19 4 replacement and repurchase calculations pursuant to  
20 5 Song-Beverly?

21 [Objection]

22 12 THE WITNESS: I guess it would be that the --  
23 13 that the programs and manufacturers comply with the  
24 14 California Civil Code 1793.2(d)(2) or -- excuse me --  
25 15 (d)(2), yes, as it pertains to a replacement or a  
26 16 repurchase or a restitution.

27 17 BY MS. LEE:

28 18 Q. And what would the policies and procedures  
19 regarding repurchase calculations for a leased vehicle  
20 be?

21 [Objection]

22 23 THE WITNESS: They would be the same as for a

1 24 purchased vehicle.

2 25 ///

3 1 BY MS. LEE:

4 2 Q. The calculation would be the same as for a  
5 3 purchase vehicle?

6 4 A. Yes, I believe so.

7 BMW's Better Business Bureau Auto Line program has been certified by  
8 the ACP, a bureau within the California Department of Consumer Affairs charged  
9 with certification and review of the qualified dispute resolution process set forth in  
10 the Tanner Consumer Protection Act, Civil Code section 1793.22. (*Department of*  
11 *Consumer Affairs v. Superior Court* (2016) 245 Cal.App.4th 256, 260; see Bus. &  
12 Prof. Code, §§ 472–472.5 [certification of third party dispute resolution processes  
13 for new motor vehicles]; Cal. Code of Regs., tit. 16, §§ 3396.1 to 3399.6  
14 [arbitration certification program].)<sup>1</sup>

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25 <sup>1</sup> Additionally, arbitrators rendering a decision under a qualified program  
26 must take into account the written warranty and the rights and remedies conferred  
27 in regulations of the Federal Trade Commission contained in Part 703 of Title 16  
28 of the Code of Federal Regulations. (Civ. Code, § 1793.22, subd. (d)(7).). See also  
*Freas v. BMW of N. Am., LLC*, No. 3:17-cv-01761-H-AGS, 2018 WL 3642130  
(S.D. Cal. Aug. 1, 2018) (holding that BMW, represented by the same defense  
counsel in as this matter does not have a qualified arbitration program because it  
does not meet the standards of Federal Trade Commission contained in Part 703 of  
Title 16 of the Code of Federal Regulations.)

1 It is Plaintiff's contention that, if Defendant BMW of North America LLC  
2 is in compliance with the California Department of Consumer Affairs ACP as they  
3 claim, then the ACP policies and procedures regarding repurchase calculations for  
4 a leased vehicle as testified to by Mr. Santillan above should be the measure of  
5 Plaintiff's damages in this matter<sup>2</sup>.

6  
7 Dated: September 27, 2018

Strategic Legal Practices, APC

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9 By: /s/ Eleazar Kim

Eleazar Kim  
Attorneys for Plaintiff

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27 <sup>2</sup> If Defendant is not in fact following the ACP, then Defendant's  
28 arbitration program is not qualified and therefore Plaintiff is entitled to the  
statutory presumption under California Civil Code Section 1793.22 (d) regarding  
the requirements of a qualified arbitration program.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2018 I filed the foregoing document entitled **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S TRIAL BRIEF RE: DAMAGES** with the clerk of court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this action.

/s/ Eleazar D. Kim

Eleazar D. Kim